

Boby Mathew Vs. State of Karnataka

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Court : Karnataka

Decided On : Mar-15-2004

Reported in : 2004CriLJ3003; 2004(5)KarLJ415

Judge : S.R. Bannurmath and ;S.B. Majage, JJ.

Acts : [Evidence Act, 1872](#) - Sections 8 and 154; [Indian Penal Code \(IPC\), 1860](#) - Sections 300; Code of Criminal Procedure (CrPC) , 1974 - Sections 313

Appeal No. : Criminal Appeal No. 1690 of 2001

Appellant : Boby Mathew

Respondent : State of Karnataka

Advocate for Def. : H.S. Chandramauli, S.P.P.

Advocate for Pet/Ap. : N.B. Bhat, Adv.

Disposition : Appeal dismissed

Judgement :

S.R. Bannurmath, J.

1. Being aggrieved by the judgment of conviction dated 21st of August, 2001 passed by the learned Sessions Judge, Bangalore, in Session Case No. 281/1995 finding the accused/appellant guilty of the offence punishable under Section 302,

I.P.C., and sentencing him to undergo imprisonment for life with a fine of Rs. 5000/- carrying default sentence, the present appeal is filed.

2. The brief facts, giving rise to the present incident as projected by the prosecution, are as follows :--

The deceased-Dr. Ravish, his wife Dr. Nivedita P.W. 7 and son Sushrutha P.W. 9 were residents of Banashankari area in Bangalore. Both husband and wife were medical practitioners having their separate attendance in different hospitals. Apart from being a medical practitioner, the deceased was also interested in photography, computer graphics, music and painting. According to the prosecution out of these few hobbies, photography was his passion. This passion of photography by the deceased was so much that even while going on professional duty, he used to carry his photography kit bag along with the medical bag also. He had acquired or purchased costly cameras and other photography accessories to pursue his hobby and in fact he had also set up a dark room in his house to develop photographs as well as had other accessories like enlarger.

3. According to the prosecution, the accused-Bobby Mathew, resident of Sadanandanagar of K. R. Puram, N.G.E.F., Layout, a student of B.E. Course then, was also interested in photography and it is not in much dispute as spoken to by his sister P.W. 4 Petsy and father P.W. 5 Sri Mathew Thomas, the accused had set up a dark room in his room on the first floor of house bearing No. 278, Sadanandanagar, N.G.E.F. Layout. According to the prosecution, these common hobbies and interests between the accused and the deceased brought them together and the relationship grew up somewhere in the range of close friendship or acquaintance with each other.

4. According to the prosecution, the first meeting of the accused and the deceased was in the year 1994 when the deceased intended to sell photo enlarger, transformer and analyser with him and in this regard he had placed an advertisement in English Daily Newspaper 'Deccan Herald' dated 24-7-1994 (Ex. P.34). In response to the same, number of interested persons including the accused had visited the house of the deceased to probably inspect and negotiate regarding the same. Ultimately it was the accused who succeeded in purchasing

these articles for a sum of Rs. 14,000/- from the deceased. Even thereafter the accused used to visit the house of the deceased seeking advice regarding photographs taken by him and deceased also used to go to the house of the accused some time.

5. On 18-2-1995, according to the prosecution the deceased had telephoned to his house (the phone was received by his son P.W. 9) that he was going to the house of the accused and will come in the evening after lunch with the accused. This was only to show the close relationship between the accused and the deceased.

6. Coming to the incident, according to the prosecution, on 20-2-1995, while leaving the house along with medical and photography bags, at about 9.00 or 9.15 a.m., the deceased informed his wife P.W. 7 Dr. Nivedita that he is going to the house of the accused to meet him. P.W. 8 Bhaskar Rao a sculptor and painter had come to the house of the deceased at that time to request the deceased to come to his house to take photographs of his sculptures. However saying that the deceased had to go to the house of the accused, the deceased declined to go then and promised P.W. 8 that he will come in the evening. On the way it is alleged that, the deceased also met P.W. 11 Chandranatha Acharya, Chief Artist of 'Prajavani' Newspaper at M.G. Road, another acquaintance of the deceased, and after chatting with him while leaving the place casually mentioned to him that he is going to K. R. Puram to meet one Bobby (accused). Thereafter Dr. Ravish is not seen alive.

7. On 20-2-1995 P.W. 7 Dr. Nivedita had returned home after attending her clinic in the afternoon to prepare lunch for herself and her husband the deceased and was waiting for his arrival. At about 2 or 2.30 p.m. when the bell of her house rang, thinking that it is her husband when she peeped out, P.W. 7 saw somebody standing at the door step, according to the prosecution, on her enquiry, the person introduced himself as Bobby and as probably P.W. 7 knew the acquaintance of the said Bobby with the deceased, opened the door and let him to come inside. After coming inside, P.W. 7 informed the accused that her husband had gone to the house of the accused himself and in turn accused alleged to have told her that the deceased had telephoned him at about 11.00 a.m. informing that the deceased is

going to Hoskote to attend Artists camp and that he would be returning to his (deceased) house by about 2.30 or 3.00 p.m. and in fact the deceased had requested the accused to come to his house then. As such P.W. 7 allowed the accused to come inside and sit in the hall affording hospitality. During chatting, it is alleged that, the accused enquired about the son P.W. 9 who had by then was attending the school on that day. After some time, it is alleged that, the accused left the house stating that he will take his food outside and come back within a short time. According to the prosecution, again around 3.00 p.m. or so, the accused returned to the house of the deceased. P.W. 7 offered him a cup of coffee and then the accused sought permission of P.W. 7 to make a phone call to the deceased. When permitted, the accused alleged to have dialled for Dr. Ravish and then informed P.W. 7 that Dr. Ravish wants to speak to her. P.W. 7, who was casually standing near the front door, came back inside the hall and when picked up the telephone, she did not get any response from other side and at that stage when she was about to ask the accused, it is alleged that she received a blow with a hammer on her head from the accused. According to the prosecution thereafter the accused assaulted her indiscriminately. Attracted by her cries, some neighbours alleged to have come to the house and thereafter taken her to the hospital.

8. At this stage, we would like to mention that so far as the attack on P.W. 7 by the accused, it is not much in dispute that a case in S.C. No. 423/1995 for the offences punishable under Sections 307 and 458, I.P.C., has been registered, investigated, tried and the accused is convicted. It is submitted at the Bar that against the said judgment of conviction, an appeal has been filed by the appellant in Criminal Appeal No. 297/2004, which is pending adjudication. As such we would like to deal much in detail about the aspect of accused assaulting the deceased. Be that as it may. After P.W. 7 was taken to a nearby hospital, information of the same was sent to P.W. 12 Satish and P.W. 6 Girish the other brothers of the deceased. After their going to the hospital, they were informed by P.W. 7 about the attack on her by the accused as well as the fact that Dr. Ravish who had left the house in the morning has not returned back and that P.W. 7 is concerned about him especially when the deceased had left the house stating that he is going to the house of the accused and it is the accused, who had assaulted her on the very

day.

9. On learning the same that Dr. Ravish who had left the house in the morning had not come back at about 4.30 p.m. or so, P.W. 6 Girish went in search of the deceased by making phone calls and contacting relatives and friends of the deceased. But no clue was available as to the whereabouts of Dr. Ravish. In the meanwhile, as doctors had advised shifting of P.W. 7 to NIMHANS, arrangement was made to shift her to NIMHANS. She was operated upon and after her shifting to another hospital namely Bangalore Hospital, P.W. 6 and others continued to search for the deceased even in the night. On the next day morning at about 9.00 a.m., when the deceased did not return, P.W. 6 went to the jurisdictional Police at Byappanahalli Police Station and lodged a missing complaint as per Ex. P.35. P.W. 18 Dharendra P.S.I. of the same Police Station registered a case in Crime No. 97/ 1995 under man missing category and after sending the first information took up the search along with the relatives of the deceased including P.W. 6. While the team was near Malleshwar, it is alleged that P.W. 18 received information that a dead body of a male person is found in a house at NGEF Layout. Both P.Ws. 6 and 18 after picking up P.W. 12 and another, went to the house at Sadanandanagar, identified the body as that of Dr. Ravish.

10. In the meanwhile, according to prosecution, on 21-2-1995, P.W. 4 Betsy Mathew. sister of the accused appeared before P.W. 16 S. Badarinath the P.S.I. of Byappanahalli Police Station and gave information about a dead body being found in the room of her brother the accused at No. 278, Sadanandanagar, N.G.E.F. Layout. P.W. 16 after reducing the statement of P.W. 4 in writing registered a case in Crime No. 50/1995 for the offence punishable under Section 302, I.P.C., against the accused and the criminal investigation was set in motion. Then the investigating team conducted necessary mahazars like spot mahazar, seizure of the material objects in the house mainly articles belonging to the deceased, photographs of the house and the body position through Police photographer as per Exs. P.5 to 8 and the body was sent for autopsy.

11. On 23-2-1995, according to the prosecution, accused surrendered himself before the Additional Commissioner of police. P.W. 19-N. V. Jayaram the

Assistant Commissioner of Police, who had by then taken up investigation in Crime No. 50/1995, arrested the accused and interrogated. It is alleged by the prosecution that during the interrogation, the accused volunteered to give a statement as per Ex.P48 (the admissible portion marked). On the basis of this disclosure certain articles like M.O.44-a suit case, M.O.45-a kit bag, M.O. 29-camera bag, camera lenses, etc., are alleged to have been recovered from the house of one George as pointed out by the accused. Certain other articles including keys of the house of accused, clothes of the accused were also seized from his house. It is to be noted here itself the keys, especially M.O. 56 produced by the accused were tested with the lock on the first floor room and found working. During the investigation, statement of witnesses were recorded and after completion of the investigation and receipt of all the necessary reports, charges sheet was filed against the accused for the offences punishable under Sections 302 and 392, IPC.

12. After committal and framing of the charges for the aforesaid offences as the accused denied the charges and claimed to be tried, he is tried in Session Case No. 281/ 1995. In order to establish the guilt of the accused the prosecution has relied upon the evidence of 22 witnesses, got marked Exs.P. 1 to 58 as well as M.Os. 1 to 60. Total denial appears to be the defence strategy, as is clear from the denial answers given by the accused when questioned under Section 313, Cr.P.C, However to question No. 39, he has stated that 'I am totally innocent of the case and that I have no connection whatsoever. The dead body was not found in our house where I used to stay as mentioned in the allegation.' It is to be noted that neither defence evidence has been lead nor any documents are got marked by the defence. As already noted after appreciation of the entire evidence, the trial Court: found the accused guilty of the offence punishable under Section 302, IPC., alone and sentenced him accordingly. Hence, the present appeal.

13. Sri N. B. Bhat, learned counsel appearing for the appellant vehemently challenged the findings and judgment of conviction inter alia contending that the trial Court had committed an error in appreciation of the evidence which is more helpful Co the accused than the deceased. It is submitted that as there are no eye-witnesses to the incident and as the entire case of the prosecution revolves

around the evidence of circumstantial in nature, as is well settled by various pronouncements that the prosecution is required to establish the entire chain of circumstances properly linked and pointing out towards only answer viz., the guilt of the accused. In the present case, it is contended that as the evidence of the prosecution witnesses themselves disclose the prosecution has not only failed to establish the chain of circumstances but also, as is apparent, every link in the chain of such circumstances is broken and as such the trial Court was not justified in finding the accused guilty on such scanty and scattered material. Taking us through the evidence especially the charge-sheet, the charge and the investigating material, it is contended that motive is of primary importance to be established by the prosecution especially when the entire case of the prosecution revolves around the circumstances evidence. In the present case, it is contended that not only no motive as found by the motive of robbery or committing theft is established as held by the trial Court itself, but from the reading the entire material it is apparent that the prosecution has tried to shift or change the motive aspect from time to time. To demonstrate the same it is contended that as per Ex.P4, the first information, the alleged motive is stated to be in respect of some quarrel between the accused and the deceased in respect of alleged misbehaviour of the deceased with P.W.4-the sister of the accused. But thereafter this theory has been given up and now a new picture is projected to contend that the deceased was murdered by the accused for his valuable possession of cameras or accessories. As such it is submitted that, as is apparent, it is motiveless crime in which case, as motive plays an important role and same being absent in the present case, the first and paramount link in the chain of circumstances is broken.

14. It is also contended that the lodging of the first information is also not established by the prosecution is as much as P.W.4 has not supported the prosecution at all. Her evidence which is to the effect that she did not go to the Police and give the first information and on the other hand it was the Police who came to her house, took her signatures on four to five blank papers and appears to have used the same to create documents like Ex.P.4. Hence, it is contended that as the very basis for setting up the investigating in motion by the first information is taken away, base of the prosecution falls and in turn the entire structure built upon such Ex.P4 has to collapse.

15. Nextly it is contended that the alleged fact that there was acquaintance of accused with the deceased is also not established by the prosecution beyond reasonable doubt. In this regard it is contended that the reliance placed upon by the prosecution on the evidence of P.W.7 (the wife), P.W.6 and P.W.12-the brothers of the deceased as well as P.Ws. 8 and 11 (the acquaintances of the deceased) is unreliable and ought not to have been accepted by the Court below. It is contended that these are highly interested witnesses and their testimony without any corroboration from the independent source ought not to have been relied upon by the trial Court. In this regard it is also contended that even if for a moment, the fact that the deceased informed these people that he is going to the house of the accused is accepted, there is absolutely no material to show that in fact the deceased went to the house of the accused. In this regard it is contended that in the absence of any cogent evidence either from the neighbours of the locality or from anybody else seeing the deceased entering the house of the accused, no reliance could have been placed on this part of the testimony. In this regard it is pointed out that if really the deceased had informed P.Ws.7 and 8 and 11 that he is going to the house of the accused, then after the alleged assault (incident) on P.W.7, when P.W.7 expressed her anxiety as to the safety of her husband -- Dr. Ravish and in fact when P.W.6 lodged a missing complaint Ex.P.35, the same ought to have found place in it. Absence of the same in Ex.P.35, according to the learned counsel, shows that this part of the theory is an after thought merely to implicate the accused with the crime in question.

16. It is also contended that the question whether the incident took place in the house of the accused itself is doubtful. It is also contended in this regard that if the alleged incident took place in broad day light and in a busy locality and the house of the accused is surrounded by many other residential houses, some one ought to have heard either the quarrel alleged to have been going on between the accused and the deceased or at least the death cries of the deceased when he was alleged to have been beaten by the accused with hammers, G.I. Pipe, knife, scissors, etc. As such it is contended that there is very much doubt as to whether the incident took place at all in the house of the accused.

17. Nextly commencing upon the nature of other evidence including the medical evidence, it is contended that P.W. 15 the autopsy doctor has not stated in his evidence as to the cause of injuries and type of weapon used, especially when according to the prosecution two hammers, a pair of scissors, an iron G.I. Pipe, knife, etc., alleged to be the weapons of assault have been recovered from the house of the accused. In the absence of medical evidence in this regard, it is contended that doubt is created as to genesis of the incident itself.

18. Nextly challenging the alleged recoveries at the instance of the accused, it is contended that the recoveries were alleged to have been made of certain articles from the house of one Abraham George on the alleged information furnished by the accused. It is contended that for the reasons best known the prosecution has not examined him, which amounts to suppression of material evidence and hence it is contended that the alleged recoveries or discovery of fact at the instance of the accused under Section 27 of the Indian Evidence Act is unacceptable.

19. Commenting upon the probabilities based on the prosecution evidence, it is contended that as is apparent from the evidence both the accused and the deceased were strong and hefty persons and if really there was a scuffle between them, there ought to have been some injuries on the accused also, especially when according to the prosecution the deceased was being dealt with more than 30 blows on his body with blunt weapons like hammers, G.I. Pipe as well as sharp weapon like pair of scissors, the deceased would not have surrendered meekly. Absence of any injuries on the accused according to the learned counsel indicates that the incident has not taken place as projected by prosecution. Similarly commenting upon the alleged recovery of the scooter of the deceased, it is contended that if really the deceased had gone, using his scooter to go to the house of the accused and there he was done to death, it is surprising how the scooter came to be discovered or found hardly few furlongs away from the house of the deceased instead of in the near vicinity of the house of the accused. It is also contended that absolutely there is no evidence of any ascendance on the part of the accused and in fact it was the accused who himself surrendered before the Police at the earliest opportunity when his name appeared in the newspapers as suspect of the crime. On these among other grounds, it is contended that the

entire appreciation of the evidence by the trial Court is not only based on surmises and conjectures but also perverse one. It is submitted that when the chain of circumstances projected by the prosecution is broken and scattered, there was no necessity for the accused to explain anything either in his statement recorded under Section 313, Cr.P.C. (as erroneously found by the trial Court) nor there was any necessity to come up with any defence evidence. Hence, it is submitted that as the judgment of conviction is based purely on conjectures and being perverse, the same is liable to be set aside and accused be acquitted giving benefit of doubt.

20. On the other hand, taking us through the entire evidence again, the learned State Public Prosecutor argued in support of the findings of the trial Court as well as the evidence projected by the prosecution.

21. Before appreciating the entire evidence and reconsidering the correctness or otherwise of the trial Court findings, we would like to remind ourselves in respect of certain guidelines given by the Hon'ble Supreme Court in various pronouncements in respect of appreciation of evidence when the prosecution case revolves around the evidence of circumstantial in nature.

22. Right from the case of Bhagat Ram v. State of Punjab, : AIR 1954 SC621 ; Bakshish Singh v. State of Punjab, : 1971 CriLJ1452 ; Udaipal Singh v. State of U.P.. AIR 1972 SC 54 ; (1972 Cri LJ 57); Ram Das v. State of Maharashtra, : 1977 CriLJ955 , the Hon'ble Supreme Court has stressed upon the fact that where a case depends upon the conclusion drawn from the circumstances, it is well settled that the cumulative effect of the circumstances must be such as to negative the innocence of the accused to bring the offences home. A duty is cast upon the prosecution to establish each circumstances in the claim of circumstances to be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. In the case of Gambhir v. State of Maharashtra, : 1982 CriLJ1243 the Hon'ble Supreme Court in fact prescribed the following tests for satisfaction of the Court before accepting the evidence of circumstantial in nature which are thus :--

'(ii) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(iii) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that without all human probabilities the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and in capable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.'

(Emphasis supplied)

23. In the case of State of U.P. v. Ashok Kumar Srivastava, : [1992]1SCR37 the Apex Court has observed thus :

'While appreciating the circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing towards the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating the circumstantial evidence and if the evidence relied on is reasonable capable of two inferences, the one in favour of the accused must be accepted, The circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. But this is not to say that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise.'

24. In the recent pronouncement in the case of Ezhil v. State of Tamil Nadu, : 2002 CriLJ2799 and in the case of Sanjay alias Kaka v. State (NCT of Delhi), (: 2001 CriLJ1231 some guidelines have been emphasised. In the case of State of West Bengal v. Mir Mohd. Omar, : 2000 CriLJ4047 the Apex Court has observed that 'the pristine rule that the burden of proof is on the prosecution to prove the

guilt of the accused should not be taken as a fossilized doctrine, admitting no process of an intelligent reasoning even when the doctrine of presumption considered to be not a rule alien to the above'.

25. Keeping in view all these well settled guidelines, we have considered the entire evidence afresh in the light of the arguments advanced by both the sides.

26. At the outset so far as death of Dr. Ravish being homicidal in nature, there is no much dispute. Even otherwise, the evidence of close relatives of the deceased P.W.7, 6 and 12 respectively as well as the inquest proceedings and more specifically the evidence of autopsy Dr. Patil -- P.W. 15 clearly indicates that when he examined the dead body of Dr. Ravish, he found as many as 31 injuries on different parts of the body. On dissection he found that there was extra evasion over the left tempo partio occipital region completely. He also noticed depressed comminuted fracture of all the bones of left anterior and middle cranial fossilized into multiple pieces and blood extra vasated over fractured sites. He also noticed laceration of the brain membranes and lacerated fracture sites with subdural and sub-arclinoid haemorrhages all over left side chest wall contused. According to this doctor, all these injuries were ante mortem in nature and the cause of death was due to shock and haemorrhage as a result of injury to the vital organ like brain. Though as pointed out by the learned Counsel for the appellant, the autopsy doctor has not given in detail as to which injury was caused with what weapon, as number of possible weapons have been seized from the spot or on the information furnished by the accused. However what is relevant for our purpose at this stage is the evidence of autopsy doctor that hammers like M.Os.16 and 47 can cause lacerated injuries found in the head region. No doubt it is also true that the doctor has given opinion as to the incised injury being capable of caused by M.O. 48 only in respect of injury No. 27 and he has not given as to the cause in respect of other incised injuries. in our view it may be at most apathy or negligence on the part of the doctor but as the entire evidence discloses, there cannot be any doubt that Dr. Ravish met with homicidal nature of death. But the moot question is who did it and more specifically as to whether the prosecution has succeeded in bringing home the guilt of the accused beyond reasonable doubt.

27. After careful analyse and detail reading of the prosecution evidence, the following circumstances in our view formed chain of circumstances as projected by the prosecution :--

1. The accused and the deceased were acquainted with each other over their common interest and hobby of photography;
2. Their acquaintance was more close like friends as the accused used to visit the house of the deceased and vice versa often;
3. On 18-2-1995 the accused had telephone conversation with the deceased and in pursuance of the same the deceased did visit the accused, had a lunch and returned back to home late in the evening;
4. On 20-2-1995 the deceased left his house informing his wife -- P.W.7 that he is going to the house of the accused. At the same time, he had also informed this fact to P.W.8 who was present there incidentally at the time the deceased left the house;
5. On the way he also informed this fact to his another friend P.W. 11;
6. Thereafter Dr. Ravish is not seen alive;
7. His dead body is found in house No. 278, Sadanandanagar, NGEF Layout, in the house of P.W.5 -- Mathew (father of the accused) and in the first floor room in exclusive possession and use of the accused;
8. The conduct of the accused going to the house of P.W.7 in the afternoon of the same day, giving false explanation about the whereabouts of the deceased and then assaulting P.W.7;
9. a) Surrender of the accused on 23-2-1995 before the Additional Commissioner of Police and after arrest and interrogation given voluntary statement, leading to the discovery of material objects including certain articles belonging to the deceased from the house of one George as well as from his own house;

b) The conduct of the accused in denying totally the prosecution case and absence of any explanation by the accused as to the material evidence projected against him;

c) ascendance from 20th till 23-2-1995; and 10. Lastly the probable motive.

28. Again at the outset we would like to deal with the motive aspect. No doubt it is true that if there is motive established in a criminal case indicating as to why the accused committed the heinous crime like the murder of a fellow human being and if the same is established or probabilsed that would be an material evidence to suspect or affirm the role of the accused in the said crime. However as observed by the Apex Court in the case of Krishna Pillai v. State of Kerala, : AIR 1981 SC1237 , 'it is not a sine qua non for the success of the prosecution that the motive must be proved. So long as the other evidence remains convincing and is not open to any doubt, conviction may be based upon such other material irrespective of the fact as to whether motive is established or not'.

29. It is to be noted that motive for a crime is an act of mind and cannot be fathomed like any other physical evidence. Basically the motive would be known only to the deceased and more specifically to the accused. The deceased is no more and accused by virtue of his right of silence as per our jurisprudence need not state anything further as to the motive or absence thereof. As such it is only an effort made by the Investigating Agency or prosecution to put forth what may be probable reason or motive for the accused to commit a crime. As observed by the Apex Court in the case of State of Himachal Pradesh v. Jeet Singh, : 1999 CriLJ2025 . 'When the prosecution succeeds in showing the possibility of some ire or ill will for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution as it is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom is offended.'

30. Applying these guidelines when we peruse the entire evidence especially Ex.P4, the first information, which has set the investigation in motion, there

appears to be some grouse present or developed between the accused and the deceased. Though this was motive, according to the prosecution, as per the charge-sheet possibly finding that some of the valuable articles of the deceased were also recovered from the house of the accused as well as at the instance of the accused, the motive alleged is also one of committing theft of valuable articles belonging to the deceased as mentioned in the complaint/charge-sheet. In our view, even if the contention of the learned Counsel for the appellant is accepted that the prosecution has failed to establish clear motive or what is stated, as 'motiveless murder', even otherwise, in our view, if the other circumstances pointing guilt of the accused negating the innocence of the accused is established by the prosecution, absence of proof of any motive is of no consequence.

31. Here itself we would like to mention that the fact of dead body of Dr. Ravish being found in the first floor room of the house bearing No. 278, Sadanangagar, NGEF Layout, is of no much dispute. No doubt the accused in his statement recorded under Section 313, Cr.P.C., as well as suggested to every witness tried to contend that there was no murder, no dead body in the said house. But all the suggestions have been futile especially from the positive evidence of independent mahazar witnesses including P.W.I, inquest proceedings as well as evidence of the Investigating Officer. It is to be noted that the suggestions put to these witnesses denying finding of the dead body in the house of father of accused and specifically in the room on the first floor-in possession and occupation of accused have been denied totally and as such the suggestion remain at suggestion stage only and not fruitful for the defence. On the fact of positive evidence especially in the absence of any fruitful cross examination of the prosecution witnesses referred-to above, we find that the prosecution has established beyond any doubt that the dead body of Dr. Ravish was found in the first floor room in house bearing No. 278, Sadanandanagar, NGEF (K. R. Puram). It is also to be noted here itself that P.Ws. 4 and 5 sister and the father respectively of the accused though turned hostile, the fact that the house belonged to P.W.5 (father of the accused) and the room on the first floor was in exclusive possession and usage of the accused is practically admitted. Hence, we have no hesitation to hold that the prosecution has established that the dead body of Dr. Ravish was found in the first floor of the house bearing No. 278, Sadanandanagar, NGEF Layout belonging to P.W.5 and

the accused.

32. This takes us to the next circumstances as to the alleged acquaintance of the accused with the deceased. The fact that both the deceased and the accused had photography as hobby is also not very much in dispute. Even otherwise so far as the deceased is concerned, evidence of P.W.7 (wife) and his brothers-P.Ws. 6 and 12 speak amply about the same. The expertise of the deceased in photography is well corroborated by P.W.6 Girish Kasarvalli -- the elder brother of the deceased, who himself is a Film Director. He has spoken highly about the skills of the deceased in photography which he had stated that he has used the same in the profession. Similarly P.W.8 --Bhaskar Rao, a painter and sculptor by profession, has also spoken to the same and to the effect that he had taken the assistance of the deceased to photograph his sculptures probably for promotion, etc. Similarly P. W. 11 -- Chandranatha Acharya, a Chief Artist of Prajavani Daily Newspaper Group has also spoken to the same in detail. Thus from the evidence of these witnesses P.Ws. 6, 7, 8 and 11 it is apparent that the deceased was having photography as a hobby and in fact appears to be a skilled matured photographer. Similarly so far as accused is concerned, even the hostile witnesses P.W.4-Betsy Mathew and P.W. 5-Mathew V. Thomas, who are none else than the sister and father of the accused speak volume about the same. No doubt they have tried to state that though the accused had camera, he used to take only family photographs but the fact that the accused too had a dark room in his room speaks contrary specifically about his deep interest in photography, developing, printing, etc. Added to this, as successfully shown by the prosecution, on 24-7-1994, the deceased intended to sell the photo enlarger of 'Hamsa' make, a transformer and analyser and in this regard, he had put up an advertisement in 'Deccan Harald' Newspaper as per Ex.P.34. According to the prosecution, in pursuance of this advertisement, it was the accused who came to the house of the deceased and ultimately purchased the same for Rs. 14,000/-. This fact is evidenced by the receipt -- Ex.P36 produced by the accused himself immediately after his arrest. Thus, we find that both accused and the deceased were acquainted or came in contact at least over their common interest in photography from July, 1994 onwards.

33. The fact of accused and the deceased meeting each other is also spoken to by P. W. 7 - the wife of the deceased. Apart from general statements about acquaintance and meeting each other, according to her, two days prior to the incident, on 18-2-1995 at about 2.00 in the noon, her husband (deceased) telephoned to the house stating that he would be going to the house of the accused straightaway from the hospital and would take his food with the accused and return late to his house. P.W. 7 states that thereafter returning to the house her husband informed her that he himself and the accused had taken food in a hotel and thereafter they had gone to the house of the accused wherein the deceased had instructed or briefed the accused as to the fineries of photographs. According to this witness, even on 19th in the night, the deceased had received a phone call and on enquiry from P. W. 7, he informed her that it was the accused who had made the phone call asking the deceased to go over to his house on the next day before going to the hospital. This part of the evidence of P. W. 7 has practically remained unchallenged. Absolutely we find no cross-examination by the defence in this regard. As held by the Apex Court in *Sarwan Singh v. State of Punjab* : 1995 CriLJ3630 'it is rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put. his case in cross examination it must follow that the evidence tendered on that issue ought to be accepted.' Hence, we find that there is sufficient positive material to indicate the well acquaintance of the accused with the deceased, their meeting in each other houses often taking meals together, etc.

34. Nextly coming to the date of incident, according to P. W. 7, the deceased informed her before leaving the house that in pursuance of the phone call received from the accused in the previous night, before going to the hospital he is going to the house of the accused. This evidence has been corroborated by the independent evidence of P. Ws. 8 and 11. As put forth by the prosecution, P. W. 8- Bhaskar Rao was a sculptor and a painter and his art work was often photographed by the deceased. As such the said witness had come to the house of the deceased in the morning of 20th to invite him to his house for photographing a sculpture. According to the prosecution, at that stage, the deceased declined or showed his inability to go to the house of P. W. 8 on the ground that he is proceeding to the house of one Bobby at K.R. Puram. Though this witness is not

knowing who this Bobby is, that is to say, whether he is the same person as the accused, what is important for our purpose at this stage, is the information given by the deceased to P. W. 8 that he is going to the house of Bobby at K.K. Puram. In view of the finding given by us earlier that the dead body of Dr. Ravish is found in the house bearing No. 278, Sadanandanagar, NGEF Layout, owned by none else than P. W. 5 - the father of the accused and who, in turn along with P. W. 4 - the sister of the accused, in unequivocal terms admit that the first, floor rooms were in exclusive possession and usage of the accused himself, clearly indicate that the deceased intended to meet none else than the accused Bobby on that day morning. Further, the evidence of P. W. 7 and 9 again is corroborated by P. W. 11 - Chandranatha Acharya, Chief Artist of Prajavani Group of Publications. According to this witness, in the morning while he was standing in front of his office, he met the deceased, chatted some time and while going, the deceased informed him that he is proceeding towards the house of one Bobby at K.R. Puram.

35. The argument of the learned Counsel for the appellant's that these two witnesses are planted witnesses and at the worst are being chance witnesses and hence their evidence should not be accepted. Commenting upon especially the evidence P. W. 11, it is contended that on a busy road - M, G. Road, where hundreds of vehicles will be plying at about 10 or 10.30 in the morning, it was rather impossible or improbable for the deceased and this witness to see each other and more specifically it is contended rather impossible for the witness to see the deceased going ahead, taking a 'U' turn and coming back in front of the Prajavani Office where P. W. 11 was standing. Even giving some margin to the attempt of embellishment on the part of P. W. 11 as to giving aforesaid details as to how the deceased went ahead, took 'U' turn and came back to him, we find absolutely no material to suspect the natural evidence of this witness. Even for a moment if we discard the evidence of P. W. 11 as unnatural, still the cogent and consistent evidence of P. Ws. 7 and 8 remains on record to show that the deceased was about to leave the house informing these people that he is going to the house of one Bobby at K. R. Puram, We have already found the connecting link of the said Bobby as none else than the accused in the present case, so we find no reasons to discard the evidence of the prosecution and especially P. Ws. 7

and 8 to show and up- hold that in the morning of 20th February 1995, the deceased left his house to go to the house of the accused.

36. Before considering the next circumstances, at this stage itself we would like to advert to the evidence of P. Ws. 4 and 5 and to Ex. P.4 - the first information, which has set the investigation in motion. In this regard as is seen from the evidence, P. W. 4 has totally denied giving any statement like Ex. P.4. It is to be noted that though P. W. 4 is a well educated girl studying in II Year B. A. during the relevant time, she has stated that she did not visit the Police Station on 21-2-1995. On the other hand, according to her, it is the Police who had visited her house, obtained her signatures on three or four blank sheets and according to the defence, these blank sheet with signature of P. W. 4 have been misused to create a false document like Ex. P. 4 the first information. Keeping in view the fact that P. W. 4 is none else than the younger sister of the accused, we expect no more answers than the one she has given before the Court to protect the interest of her brother the accused herein and as such she has been rightly treated as hostile. Though the learned counsel for the appellant tried to contend that the evidence of such hostile witness has to be discarded, lock stock and barrel, we find the position of law as enunciated by the Apex Court as well as this Court in number of cases is otherwise. Hostility of witnesses in criminal cases in our country is most common either due to the pressures from the family of the accused, or being closely related to the accused or any other possible reason like even threat, bribe, etc. But mere hostile attitude of a witness cannot be a ground to discard certain fact realities, if so otherwise disclose from the evidence of other reliable witnesses. In fact, as held by the Apex Court in the case of Koli Lakshmanbhai Chanabhai v. State of Gujrat (2000 Cri LJ 408 : (AIR 2000 SC 210) 'evidence of even hostile witness so far as his evidence supports the prosecution version can be relied upon by the Courts'. Hence, we find no reasons to totally discard the evidence of such hostile witness as we find that basically after Dr. Ravish was found missing or not available from the morning of 20-2-1995. in spite of the efforts made by his brothers and others to trace him and in this regard a missing complaint as per Ex. P. 35 was also filed on 21-2-1995 especially after murderous attempt of assault on the wife P. W. 7 alleged to be by the deceased. What is to be noted is the fact that the body of Dr. Ravish was discovered in the house especially in the room of the

accused on 21 st by P. W. 16 and this must have been only on the basis of some information given by P. W. 4 herself. It is to be noted that the discovery of dead body of Dr. Ravish was at the instance of or on the information furnished by some one close to the accused himself and as had been clinchingly pointed out by the prosecution, it was only P. W. 4 and none else. Hence, irrespective of the fact that P. W. 4 has denied the giving of first information as per Ex. P.4, keeping in view the admitted close relations between the said P. W. 4 and the accused on one hand and the independent evidence of the Investigating Officer - P. W. 16 as well as panch witnesses - P. Ws. 1 and 2, we find that the evidence of P. W. 4 though hostile has to be accepted atleast to the limited purpose being that it was her information which lead the Police to discover the body of Dr. Ravish in the house of P. W.5 and especially on the first floor in the usage or possession of the accused himself.

37. It is to be noted that P. W. 4. who is fairly a well educated girl having studied or pursuing study in one of the reputed colleges in Bangalore and as her evidence discloses before the Court, fairly a girl of common knowledge of day to day affairs, it is rather hard to believe that such a girl would blindly sign on blank papers alleged to have been given by the Police and according to her for no reasons? From the statement of this witness, we can even suspect or anticipate that she was forced to give such statement and the main question would be for what reason. As both P. Ws. 4 and 5 have admitted in their evidence that they had no contra indicative relations with the Police prior to the incident in question, if that is so, in the normal course unlike illiterate rustic persons. P. W. 4 in the presence of her father- P. W. 5, who was a former Technical supervisor in NGEF, would not have put the signatures on blank papers without asking at least the Police as to what purpose she is required to put her signatures on blank papers. Once the signatures on Ex. P. 4 is admitted by the author viz., P. W. 4, it was for her or even up to her father - P.W.5 to assign some probable cause or reason as to why the Police asked her to put her signatures on blank papers and in the presence of her father - P. W. 5. neatly putting her signatures. As such as we have already noted even if Ex. P.4 is used for limited purpose as to finding of dead body of a person in their house, even though P. Ws. 4 and 5 have turned hostile and not supported the prosecution, in our view it would not affect the prosecution case in any manner. In

fact, in this regard the evidence of P. W. 5 as well as P. W. 4 is to the effect 'prior to 21-2-1995 no case has been booked by the Police against any members of our family, I have no grievance against the Police and the Police have also no grievance against us'. This shows total independence unbiased conduct on the part of the investigating agency towards P. Ws. 4 and 5 as well as absence of any motive to falsely implicate these witnesses as either the first informant or witnesses for other circumstantial evidence. Hence, even after these witnesses have been treated hostile, we have to accept some part of their evidence as already indicated assisting the prosecution keeping in view the well settled maxim 'false in uno, false in omnibus.'

38. Thus on entire appreciation of the evidence considered by us so far, we find that the prosecution has successfully established the following circumstances:

(i) Close acquaintance of deceased and the accused including visiting each others houses due to common bondage of hobby in photography;

(ii) On 19th accused had called the deceased to come to his house on the next day;

(iii) The deceased leaving his house in the morning of 20th informing P. W. 7 his wife and P. W. 8 a close acquaintance that he is going to the house of the accused;

(iv) The dead body of Dr. Ravish being discovered in the room of first floor of the house bearing No. 278, Sadanandanagar, NGEF Layout, of which P. W. 5 is admittedly the owner and that room being in exclusive possession and occupation of the accused where the dead body was found;

(v) On 20th and admittedly even from 15th to 21st, it was only the accused and P. W. 4 who were in the house, as P. W. 5 and his wife had left the house to go to Kerala;

(vi) The dead body of Dr. Ravish was found tied to a cot inside the room and body bearing as many as 31 injuries all over, out of which the injuries in the head region being ante mortem and fatal in nature;

39. These circumstances if considered along with other evidence viz., (i) the deceased always used to carry his medical bag and photographic kit containing valuable cameras, lenses and other accessories and in fact, in the morning of the fateful day also took the same along with him; (ii) These articles were recovered either in the room of the accused where the dead body was found or /and some of them were recovered at the instance of the accused from the house of one George (though not examined, but mahazar witness supporting to some extent and Investigating Officer fully supporting the same), we find that it was for the accused to explain basically as to how and why the dead body of Dr. Ravish was found in his room tied up to a cot bearing fatal ante mortem injuries all over his body.

40. No doubt it is true that under our Indian Jurisprudence, accused has right of silence and need not open his mouth as held in earlier pronouncements 'he can be a silent spectator watching the prosecution show to prove him guilty beyond reasonable doubt', the views of the Courts have now changed to the limited extent that once the prosecution succeeds in prima facie showing number of circumstances pointing unerringly accusing finger towards the accused, it is for the accused to come out and say or at least explain those circumstances which are shown to be against his innocence. If he still keeps his mouth shut and it is not explained or even where he tries to explain certain things which are found to be false, then the Courts are justified in drawing adverse inference against the accused as to his conduct. In this regard, the observations of the Apex Court in the case of State of Tamil Nadu v. Rajendran, : 1999 CriLJ4552 and Damodar v. State of Karnataka, : 2000 CriLJ175 are worth noticing. The Hon'ble Supreme Court has observed thus:--

'In a case of circumstantial evidence when an incriminating circumstance is shown or put to the accused and the said accused either offers no or offers an explanation which is found to be untrue, then same becomes an additional link in the chain of circumstances to make it complete,'

Accused failing to give any explanation as to how the body of the deceased came from his house or shown to be in his house, has to be held against the accused when there is no explanation. It is no doubt true that purpose of examination of the

accused under Section 313 Cr. P. C. is to give the accused an opportunity to explain the incriminating circumstances surfaced on the record. Nowhere the Section says that before recording the statement of the accused under Section 313 Cr. P. C., that he should be warned that he has duty to speak. As held by the Apex Court in the case of Rattan Singh v. State of H, P. : 1997 CriLJ833 'examination of the accused under Section 313 Cr. P. C. and answers given by the accused to the questions put to her during such examination have a practical utility for criminal Courts apart from affording an opportunity to the accused to explain the incriminating circumstances, they would help the Courts in appreciating the entire evidence adduced in the Court'. In almost in similar case and circumstances in the case of Jagjit Singh v. State of H. P. 1994 SCC (Criminal) 176: (1993 AIR SCW 3610 : 1994 Cri LJ 233) where a dead body with fatal injuries was found in the room of the accused, the Apex Court held that 'accused is bound to give an explanation which should at least look probable. If no such explanation is given or any explanation is given which is found to be false, then there is nothing wrong in drawing adverse inference against the accused or at least to hold that such silence or false explanation provides a missing link or an additional link in the chain of circumstances established by the prosecution.'

41. We hasten to add that it is not necessary in every case for the accused to explain the circumstances but where the circumstances established by the prosecution unerringly point out towards the role of the accused as being the only probable culprit, at least in such cases the accused is required to explain the circumstances against him. No doubt it is true, as pointed out by the learned Counsel for the appellant that some of the circumstances like the evidence of P. Ws. 1, 2, 4 and 5 as to the finding/presence of the dead body in the room of the accused is not put to the accused while being questioned under Section 313 Cr. P. C., as we find from the entire evidence, this fact being one of the admitted facts and when there is no positive material evidence elicited even during the cross-examination of these witnesses as to body being found somewhere and then being shifted to the room of accused, we feel that even in the absence of formality of putting this admitted fact to the accused while being questioned under Section 313 Cr. P. C., it would not help the accused in any way.

42. The next circumstances relied upon by the prosecution are in respect of certain recoveries said to have been made from the house of the accused as well as on the information furnished by the accused. The recovery of these articles either way assumes some importance as they are admittedly shown to be belonging to the deceased including his medical kit consisting stethoscope and other medical accessories as well as photographic kit containing valuable cameras, lenses, etc. Absolutely no suggestions have been made in this regard to any of the witness even to suggest that these articles belonged to the accused. When we have positive evidence of P. W. 7 - the wife, P. W. 6 - the brother of the deceased as they had occasion to see these articles being used commonly by the deceased, we find the prosecution has established this aspect.

43. So far as recoveries at the instance of the accused are concerned, no doubt for the reasons best known, the prosecution has failed to examine the said George from whose house certain articles were said to have been recovered at the instance of the accused. On the fact of voluminous material evidence, as already pointed out, merely because the prosecution has not examined the said George, in our view, this evidence of the prosecution will not be taken away especially when the Investigating Officer who is an independent Police Officer of the rank of A. C. P. and who has admittedly no bias or prejudice against the accused, has casually deposed about the same. In this regard, the evidence of another hostile witness P. W. 10 K. T. Thomas is also relevant for our purpose. He has admitted in his evidence that it was the accused, who came along with the Police to the house of George Abraham. Thereafter when firmly asserting that the Police recovered certain articles from the house of said Abraham George at the instance of the accused, this witness has given evasive answer by prefixing the words 'I think'. This shows that he is not definitely denying this aspect as in the very next sentence, he states thus: 'the accused has taken Police to a room of house of George Abraham'. On analysing this evidence, we find that the prosecution has succeeds in showing that certain articles belonging to the deceased were recovered from the house of the accused either at the time of the investigation and conducting the spot mahazar, etc. or some of them at the instance of the accused from the house of one George. In this regard, any authority of the Apex Court is required, it is in the case of *Modan Singh v. State of Rajasthan* AIR 1978 SC 1511

: (1978 Cri LJ 1531) wherein the Apex Court has observed that the 'Evidence of the Investigating Officer regarding the recovery need not be rejected on the ground that the seizure witness did not support the case of the prosecution regarding the seizure if the evidence of the Investigating Officer is found to be satisfactory.'

44. This additional circumstance of recovery coupled with the earlier circumstances which we have discussed in detail earlier coupled with absence of any malice, ill will or enmity between the prosecution witnesses and the accused which rules out the possibility of any false implication, in our view, the fate of the accused is sealed unless he even by preponderance of probabilities explained these circumstances appearing against him. In the present case, as the accused has not only denied the entire prosecution case as false, concocted but has also tried to say that he had no acquaintances as to who the deceased was and that his dead body was found in his house at all. This futile explanation or false explanation to some extent explained, in our view, provides the last missing link as an additional circumstance to make the chain of circumstances complete.

45. These circumstances established and discussed by us above, in our view satisfy all the tests laid down by the Apex Court namely the circumstances from which an inference of guilt is sought to be drawn was cogently and firmly established and these circumstances pointed out have a definite tendency entirely pointing towards the guilt of the accused and the circumstances taken cumulatively form chain so complete that there is no escape from the conclusion that within all human probabilities, the crime was committed by the accused and none else and it does not leave any reasonable doubt for the conclusion consistent with the guilt of the accused. Hence, we find there is no material to interfere with findings of the trial Court.

46. We may observe here itself that no doubt there are some hickups in the prosecution evidence like some negligence on the part of the investigating agency, medical evidence, embellishments, contradictions or omissions in the evidence of the prosecution witnesses but, on thorough scrutinize, we find that these do not affect the core of the prosecution case.

47. In the result and for the reasons stated above, we find that the trial Court, after due consideration and application of mind, has rightly found the accused guilty of the offence punishable under Section 302 IPC, and hence we dismiss the appeal as devoid of merits, upholding the judgment of conviction and sentence.

48. Since the accused is stated to be in custody, the period already undergone by him in custody during the trial or after the trial, shall be treated for the purpose of set off while considering the length of sentence he has to undergo.

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